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Sec. 742.38. (A)(1) The board of trustees of the Ohio police and fire pension fund shall adopt rules establishing minimum medical testing and diagnostic standards or procedures to be incorporated into physical examinations administered by physicians to prospective members of the fund. The standards or procedures shall include diagnosis and evaluation of the existence of any heart disease, cardiovascular disease, or respiratory disease. The rules shall specify the form of the physician's report and the information to be included in it.

The board shall notify all employers of the establishment of the minimum standards or procedures and shall include with the notice a copy of the standards or procedures. The board shall notify all employers of any changes made to the standards or procedures. Once the standards or procedures take effect, employers shall cause each prospective member of the fund to submit to a physical examination that incorporates the standards or procedures.

(2) Division (A)(2) of this section applies to an employee who becomes a member of the fund on or after the date the minimum standards or procedures described in division (A)(1) of this section take effect. ~~Not later than thirty days after such an~~ For each employee becomes a member of the fund described in division (A)(2) of this section, the employer shall forward to the board a copy of the physician's report of a physical examination that incorporates the standards or procedures described in division (A)(1) of this section. If an employer fails to forward the report in the form required by the board on or before the date that is sixty days after the employee becomes a member of the fund, the board shall assess against the employer a ~~fine of one hundred dollars per day, beginning with the first day after the date the report is due and ending on the last day prior to the date the report is received by the board. Any amount due from an employer under division (A)(2) of this section may be collected from the county auditor in the same manner as is provided in section 742.35 of the Revised Code penalty determined under section 742.353 of the Revised Code.~~

(B) Application for a disability benefit may be made by a member of the fund or, if the member is incapacitated as defined in rules adopted by the board, by a person acting on the member's behalf. Not later than fourteen days after receiving an application for a disability benefit from a member or a person acting on behalf of a member, the board shall notify the member's employer that an

application has been filed. The notice shall state the member's position or rank. Not later than twenty-eight days after receiving the notice or filing an application on behalf of a member, the employer shall forward to the board a statement certifying the member's job description and any other information required by the board to process the application.

If the member applying for a disability benefit becomes a member of the fund prior to the date the minimum standards or procedures described in division (A)(1) of this section take effect, the board may request from the member's employer a copy of the physician's report of the member's physical examination taken on entry into the police or fire department. ~~Not later than twenty-eight days after receiving a request from the board, the employer shall forward a copy of the report or, if the employer does not have a copy of the report, a written statement certifying that the employer does not have a copy of the report. If an employer fails to forward the report or statement in the form required by the board on or before the date that is twenty-eight days after the date of the request, the board shall assess against the employer a fine of one hundred dollars per day, beginning with the first day after the date the report or statement is due and ending on the last day prior to the date the report or statement is received by the board. Any amount due from an employer under this division may be collected from the county auditor in the same manner as is provided in section 742.35 of the Revised Code penalty determined under section 742.353 of the Revised Code.~~ The board shall maintain the information submitted under this division and division (A)(2) of this section in the member's file.

(C) For purposes of determining under division (D) of this section whether a member of the fund is disabled, the board shall adopt rules establishing objective criteria under which the board shall make the determination. The rules shall include standards that provide for all of the following:

(1) Evaluating a member's illness or injury on which an application for disability benefits is based;

(2) Defining the occupational duties of a police officer or firefighter;

(3) Providing for the board to assign competent and disinterested physicians and vocational evaluators to conduct examinations of a member;

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(4) Requiring a written report for each disability application that includes a summary of findings, medical opinions, including an opinion on whether the illness or injury upon which the member's application for disability benefits is based was caused or induced by the actual performance of the member's official duties, and any recommendations or comments based on the medical opinions;

(5) Providing for the board to consider the member's potential for retraining or reemployment.

(D) This division does not apply to members of the fund who have elected to receive benefits and pensions in accordance with division (A) or (B) of section 742.37 of the Revised Code or from a police relief and pension fund or a firemen's relief and pension fund in accordance with the rules of that fund in force on April 1, 1947.

(1) As used in division (D)(1) of this section:

(a) "Totally disabled" means a member of the fund is unable to perform the duties of any gainful occupation for which the member is reasonably fitted by training, experience, and accomplishments. Absolute helplessness is not a prerequisite of being totally disabled.

(b) "Permanently disabled" means a condition of disability from which there is no present indication of recovery.

A member of the fund who is permanently and totally disabled as the result of the performance of the member's official duties as a member of a police or fire department shall be paid annual disability benefits in accordance with division (A) of section 742.39 of the Revised Code. In determining whether a member of the fund is permanently and totally disabled, the board shall consider standards adopted under division (C) of this section applicable to the determination.

(2) A member of the fund who is partially disabled as the result of the performance of the member's official duties as a member of a police or fire department shall, if the disability prevents the member from performing those duties and impairs the member's earning capacity, receive annual disability benefits in accordance with division (B) of section 742.39 of the Revised Code. In determining whether a member of the fund is partially disabled, the board shall consider standards adopted under division (C) of this section applicable to the determination.

(3) A member of the fund who is disabled as a result of heart disease or any cardiovascular or respiratory disease of a chronic nature, which disease or any evidence of which disease was not

revealed by the physical examination passed by the member on entry into the department, is presumed to have incurred the disease while performing the member's official duties, unless the contrary is shown by competent evidence.

(4) A member of the fund who has completed five or more years of active service in a police or fire department and has incurred a disability not caused or induced by the actual performance of the member's official duties as a member of the department, or by the member's own negligence, shall if the disability prevents the member from performing those duties and impairs the member's earning capacity, receive annual disability benefits in accordance with division (C) of section 742.39 of the Revised Code. In determining whether a member of the fund is disabled, the board shall consider standards adopted under division (C) of this section applicable to the determination.

(5) The board shall notify a member of its final action awarding a disability benefit to the member within thirty days of the final action. The notice shall be sent by certified mail, return receipt requested. Not later than ninety days after receipt of notice from the board, the member shall elect, on a form provided by the board, either to accept or waive the disability benefit award. If the member elects to waive the disability benefit award or fails to make an election within the time period, the award is rescinded. A member who later seeks a disability benefit award shall be required to make a new application, which shall be dealt with in accordance with the procedures used for original disability benefit applications.

A person is not eligible to apply for or receive disability benefits under this division, section 742.39 of the Revised Code, or division (C)(2), (3), (4), or (5) of former section 742.37 of the Revised Code unless the person is a member of the fund on the date on which the application for disability benefits is submitted to the fund.

With the exception of persons who may make application for increased benefits as provided in division (2) or (4) of this section or division (C)(3) or (5) of former section 742.37 of the Revised Code on or after July 24, 1986, or persons who may make application for benefits as provided in section 742.26 of the Revised Code, no person receiving a pension or benefit under this section or division (C) of former section 742.37 of the Revised Code may apply for any new, changed, or different benefit.

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SECTION 3. (A) As used in this section, "employer" has the same meaning as in division (D) of section 742.01 of the Revised Code.

(B)(1) Notwithstanding section 742.38 of the Revised Code, as that section existed immediately prior to the effective date of its amendment by this act, and subject to division (C) of this section, the Board of Trustees of the Ohio Police and Fire Pension Fund shall reduce by ninety per cent a fine incurred prior to the effective date of this section under division (A)(2) of section 742.38 of the Revised Code if, prior to that date, the Board received from the employer who is subject to the fine the report that is the subject of the fine and the report was in the form provided in rules adopted by the Board. If the total amount of outstanding fines assessed against an employer under division (A)(2) of section 742.38 of the Revised Code exceeds \$30,000 after the reduction required by this division, the board shall further reduce the total amount of the outstanding fines to \$30,000.

(2) Notwithstanding sections 742.32 and 742.35 of the Revised Code, as those sections existed immediately prior to the effective date of their amendment by this act, and subject to division (C) of this section, the Board shall reduce by fifty per cent a penalty incurred under section 742.32 or 742.35 of the Revised Code during the period beginning January 1, 2000, and ending on the effective date of this section, if on or before the date that is six months after the date the report and payment were due, the Board receives from the employer the report and payment that are the subject of the penalty and the report is in the form provided in rules adopted by the Board.

(C)(1) Not later than June 1, 2002, an employer shall pay to the Fund the amount of all fines and penalties described in division (B) of this section, as reduced under this section.

(2) If an employer fails to pay all amounts due in accordance with division (C)(1) of this section or to file all required reports, the Board shall reinstate to the original amount any fine or penalty that was reduced and the employer shall pay to the Fund the reinstated fine or penalty amount. If the employer fails to pay the reinstated fine or penalty amount, that amount shall be collected from the county auditor in the same manner as is provided in section 742.35 of the Revised Code.

(3) To each employer that, prior to the effective date of this section, paid the full amount of a fine or penalty reduced under

division (B) of this section, the Board shall either refund the amount of the reduction or use the amount to reduce any outstanding amounts owed by the employer to the Fund under Chapter 742. of the Revised Code.

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